

REMARKS

Applicant appreciates the consideration shown by the Examiner and his Supervisor during the telephone interview conducted with the inventor present on March 2, 2007. During the interview, the versions of amended claims 1 and 37 set forth above were discussed in detail. Specifically, Applicant pointed out that the amended language now in these claims corresponds to the express definition of "malleable" provided in Applicant's specification. An agreement was reached that neither the Freeman nor Kuroda patents disclosed, taught, or suggested such a "malleable" display member, despite the outstanding rejections and, thus, amended claims 1 and 37 patentably distinguish over these references. All claims subject to an outstanding rejection or objection stand cancelled without prejudice.

In light of the Examiners' agreement that the final rejections of claims 1 and 37 were not supported by substantial evidence in the record, Applicant further emphasized the improper nature of the final Office Action and respectfully now requests that it be withdrawn. In the last response, Applicant challenged the rejections of claims 1 and 37, which were based on the failure to examine these claims using the express definition of "malleable" provided in the specification, in accordance with the Manual of Patent Examining Procedure. See MPEP § 2111.01 ("Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim") and MPEP § 2173.05(a) ("When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning. . ."). During the interview, the Examiners agreed with the correctness of the Applicant's position by indicating that claims 1 and 37 as amended to include the express definition of "malleable" from the specification are allowable over the teachings of the Freeman and Kuroda patents, which were the only references cited in rejecting these claims.

MPEP Section 706.07, which was cited as the reason for making the previous Office Action final, specifically cautions the Examiner to "never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal." Applicant here has plainly not had a "full and fair hearing" with respect to claims 1 and 37, since it was admitted

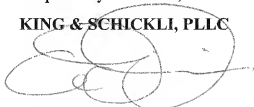
during the interview that the evidence cited in the record does not form the requisite "substantial" evidence supporting the final rejections made of claims 1 and 37. Accordingly, the Examiner should at a minimum withdraw the finality of the Office Action. If any new rejection is determined to be in order based on newly cited art, then a non-final Action will give the Applicant an opportunity to respond and set a proper record for purposes of appeal. Otherwise, Applicant is being denied due process by having its claims finally rejected despite a lack of any substantial evidence in the record supporting the rejections made. Alternatively, if claims 1 and 37 are allowable over the art of record, as was indicated during the interview, then a Notice of Allowance is in order.

Applicant also respectfully submits that entry of these non-narrowing amendments is in order. These amendments to claims 1 and 37 were not earlier presented because it was believed that the Manual of Patent Examining Procedure controlled and required examination of the term "malleable" in the claims in accordance with the definition provided in the specification. Nevertheless, the present amendments simply place the claims in better form for purposes of appeal, since they make express what was already implicit. The cancellation of claims 4, 15-17, 21-22, 24, 33, 35, and 38 without prejudice is also proper in accordance with 37 CFR 1.116(b)(1).

In light of the foregoing, Applicant respectfully requests reconsideration and allowance of all pending claims. In the event any further issue requires redress, the Examiner is invited to contact Applicant's counsel by telephone. Also, in the event any fee is due, please debit it from Deposit Account 11-0978.

Respectfully submitted,

KING & SCHICKLI, PLLC

A handwritten signature in dark ink, appearing to read "Andrew D. Dorisio", is written over the printed name and firm name.

Andrew D. Dorisio
Registration No. 41,713

247 North Broadway
Lexington, KY 40507
(859) 252-0889